

Application No. 10/534,649
Paper Dated: September 1, 2009
In Reply to USPTO Correspondence of June 9, 2009
Attorney Docket No. 3135-051381

REMARKS

This application has been amended. In particular, the claim dependency of dependent claim 24 has been changed to correct an antecedent basis issue and claim 17 has been amended to clarify that the “material layer” forms a cover, as suggested in the Office Action. Previously withdrawn claims 27-30 have been cancelled without waiver to the filing of one or more continuation applications directed to the subject matter of these claims. Thus, claims 16-26 are currently pending.

Claim Rejections Under 35 U.S.C. § 112

Claim 24 stands rejected under 35 U.S.C. § 112, second paragraph for indefiniteness. Specifically, the Office Action asserts that the limitation “the material layer” in line 2 of the claim lacks sufficient antecedent basis. Claim 24 has now been amended to depend from claim 17, rather than claim 16. Claim 17 first introduces the limitation “a material layer.” Thus, “the material layer” in claim 24 now finds proper antecedent basis in claim 17.

The Office Action additionally asserts that it is unclear what constitutes the “material layer” since both the container material and the cover material shield the compartments from the environment. Claim 17 has been amended to clarify that the “material layer” forms a cover which shields the compartments from the environment, as shown in Figures 1A, 1B and 2.

In view of these amendments, Applicant submits that the claims are sufficiently definite and the rejection of claim 24 under 35 U.S.C. § 112, first paragraph should be reconsidered and withdrawn.

Claim Rejection Under 35 U.S.C. § 102(b)

Claims 16-21 and 24-26 stand rejected under 35 U.S.C. 102(b) for anticipation by U.S. Patent No. 4,013,798 to Goltsos. This rejection is respectfully traversed.

The Office Action focuses on the embodiment of Goltsos shown in Figure 7 thereof. The Office Action asserts that, in this embodiment, Goltsos shows a container having compartments shielded from the environment and from one another where the compartments containing water laden food may be individually vented to the atmosphere by forming a portion of the side wall and adjacent rim to include a separate notch. The Office

Action considers the entire covered compartment, including the vent notch, to be an “openable passage opening” so that each compartment has “differing passage openings.” (June 9, 2009 Office Action, at 3.)

Initially, Applicant disagrees that the interpretation of the “passage openings” in Goltsos is correct and consistent with the meaning of that term in the claims of the subject application. It is axiomatic in patent law that the claims are to be interpreted in view of the specification. Applicant has provided several examples of different arrangements, such as “underpressure valves acting at different pressure levels” and individual compartments which have “passage openings with a total passage surface varying per compartment.” While these examples are not intended to be limiting, they clearly confirm that the “passage openings” are considered to be unique elements from the compartments themselves. Further evidence of this can be seen in the Figures, such as Figure 1, where the compartments are labeled as 4, 5 and 6 and the passage openings (“released portions”) are shown as 8, and Figure 2 where the compartments are again labeled as 4, 5 and 6 and the passage openings (here, valves) are labeled as 11, 12 and 13. Accordingly, the assertion that “the entire covered compartment including the vent notch” in Goltsos is analogous to an “openable passage opening” in Applicant’s claims is improper since this assertion does not comport with an accurate reading of the claims in light of the specification.

Moreover, even presuming that the entire covered compartment along with the vent portion constitutes an openable passage opening, Goltsos still fails to teach, disclose or suggest the container defined in claim 16. The passage openings of the individual compartments in claim 16 differ from each other such that overpressure in individual compartments is maximized at different pressure levels. Claim 16 does not necessarily require a container in which the individual compartments differ from one another in size and/or shape, but instead differ from one another in terms of the maximum pressure attainable in each compartment. In Applicant’s invention, this is achieved by, for instance, providing valves which activate at different pressures or associating different compartments with passage openings of different total areas. The Office Action appears to be attempting to draw an analogy between this and the overall size of the compartments with respect to one another. Hence, the Office Action appears to assume that differently sized compartments will achieve different maximum pressures.

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This, however, is not an accurate reading of the claim. The claim requires the maximum pressure to differ between the compartments. In Goltsos, there is nothing to suggest that the maximum pressure will vary between the compartments. Instead, the vented compartments all appear to share a commonly sized vent (represented by 32'). Commonly sized vents will likely rupture at the same pressure, meaning that the maximum pressure that can be achieved within the corresponding compartment will not vary between the compartments, irrespective of the dimensions of the compartment themselves. Because Goltsos fails to teach or suggest a container having each of the limitations of claim 16, Applicant submits that the rejection of claims 16-21 and 24-26 under 35 U.S.C. § 102(b) should be reconsidered and withdrawn.

Rejections Under 35 U.S.C. § 103(a)

Claims 19 and 22-23 stand rejected under 35 U.S.C. § 103(a) for obviousness over Goltsos in view of U.S. Patent No. 5,587,192 to Beizermann. This rejection is respectfully traversed.

Beizermann is directed to a ventable container comprising a body with a lip hermetically sealed by a film. A hole is provided in the lip of the container and a layer of hot melt adhesive disposed around the hole adhesively seals the film across the hole. When the food in the container is heated, the film flexes away from the tray and the hot melt adhesive softens and releases the film for venting of the container. Beizermann does not appear to disclose a container with multiple compartments, much less a container having multiple compartments that can vent at different maximum pressures.

The Office Action cites Beizermann as allegedly suggesting passage openings that are blocked prior to use and open under the influence of a determined temperature being exceeded (claim 19) and passage openings that are blocked by means of a cover element fixed with an adhesive layer wherein the adhesive layer softens at a predetermined temperature (claims 22 and 23). Beizermann does not, however, cure the deficiencies of Goltsos discussed above, namely regarding a container having multiple individual compartments provided with openable passages which differ from each other such that the pressure in individual compartments is maximized at different levels.

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Accordingly, since each of claims 19 and 22-23 depends from claim 16, the rejection of these claims under 35 U.S.C. § 103(a) for obviousness over Goltsos in view of Beizermann should be reconsidered and withdrawn.

For all of the foregoing reasons, Applicant submits that the pending claims are patentable over the cited documents of record and in condition for allowance. Accordingly, reconsideration of the outstanding rejections and allowance of pending claims 16-26 is respectfully requested.

Respectfully submitted,
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